

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

LIBERTY GARDEN PRODUCTS, INC.,

Plaintiff,

v.

THE INDIA CONNECTION, L.L.C.,

Defendant.

Civil Action File No.

---

COMPLAINT FOR BREACH OF CONTRACT

Liberty Garden Products, Inc. ("**Liberty**") brings this action against The India Connection, L.L.C. ("**India Connection**"), pleading and averring as follows:

PARTIES, JURISDICTION, AND VENUE

1. Liberty was incorporated in North Carolina and maintains its principal place of business at 1161 S. Park Drive, Kernersville, North Carolina.

2. India Connection was organized in Missouri and maintains its principal place of business at 230 Spring Street, Building 2, Suite 1410, Atlanta, Georgia.

3. India Connection may be served through its registered agent, Capitol Corporate Services, Inc., at 3675 Crestwood Parkway, N.W., Suite 350, Duluth, Georgia 30096.

4. This Court has jurisdiction over both the subject matter and the parties to this action.

5. Venue is proper in this Court.

#### FACTS

6. Liberty is a wholesaler specializing in lawn hose storage products, including reels, hangers, and pots, among other items.

7. India Connection is a trading company that procures goods from factories and oversees the manufacturing of products like those sold by Liberty.

8. One of Liberty's largest clients is Costco Wholesale Corporation ("**Costco**"), which operates membership-only retail stores and an online shop.

9. Costco has over 800 stores, or "clubs," and annual sales over \$200 billion.

10. In mid-2020, Costco contacted Liberty about creating a new hose pot to be sold online and in Costco's stores.

11. Costco and Liberty decided on a hammered metal pot with a copper patina finish.

12. The appearance was the most important feature to Costco and Liberty.

13. In June 2020, Liberty contacted India Connection about manufacturing the hose pot for Costco.

14. Tammam Rajjoub, who lived and worked in the Atlanta metropolitan area, was India Connection's primary representative who communicated with Liberty about the hose pots.

15. Liberty explained to India Connection that the finish was the most important feature of the hose pot and an essential term of the manufacturing contract.

16. The final design chosen by Liberty was a hand-hammered pot either made of copper or coated in copper paint, with an application of verdigris paint that was later sanded or rubbed off.

17. This process left verdigris paint in the hammered dimples and gave the pots an authentic patina appearance

18. On or around June 18, 2020, India Connection provided Liberty with pre-production pictures of the hose pot so that Liberty could approve the finish.

19. Liberty approved the finish shown in the picture below, which features a primarily copper appearance with verdigris accents:



20. The standard for the manufactured pots was a “70/30 rule” — that is, the verdigris paint would be sanded or rubbed off such that it covered no more than 30% of each pot.

21. After India Connection confirmed that it could provide the desired finish, the parties shifted their discussion to the material to be used.

22. On July 6, 2020, India Connection sent Liberty quotes for the pots made of different materials.

23. Liberty ultimately decided to use steel with a copper coating to match the approved appearance.

24. After Liberty chose the material, India Connection sent a preproduction sample pot to Liberty in July 2020.

25. Liberty sent the sample hose pot to Costco's buyer for approval, and Costco approved the product and the finish.

26. Liberty expressed to India Connection that the conforming sample "is what finalized the sell" to Costco.

27. The approved hose pot design was assigned Stock-Keeping Unit (SKU) No. 1514420 and identified as Model No. 1917.

28. Costco and Liberty used software from American Business Systems ("ABS") to exchange purchase orders and invoices.

29. The parties' routine practice was for Costco to submit an order to Liberty through ABS, Liberty would order the goods from its manufacturer, the manufacturer would bill Liberty for the goods, and Liberty would submit an invoice to Costco through ABS.

30. In or around July 2020, Costco ordered 1500 pots from Liberty to be sold on its website.

31. On August 6, 2020, Liberty submitted its first purchase orders—Nos. 17926 and 17928—to India Connection for the hose pots.

32. Purchase Order (“**P.O.**”) Nos. 17926 and 17928 were both for 750 pots at a price of \$19 each, and described the pots as “patina hose pot copper finish.”

33. True and correct copies of P.O. Nos. 17926 and 17928 are attached as **Exhibit A** and incorporated by reference.

34. The pots manufactured by India Connection to fulfill P.O. Nos. 17926 and 17928 were the first lot of goods (the “**First Lot**”).

35. Between August and October 2020, Liberty and India Connection discussed packaging and logistics for the First Lot.

36. Liberty ultimately approved packaging each pot in a cardboard box with interior edge protectors and all pertinent information (i.e., P.O. number, item model number, description, color, quantity, etc.) printed on one side of the box.

37. On or about October 16, 2020, India Connection produced the first manufactured sample hose pot for Liberty’s inspection and approval.

38. Liberty asked a third party, Geo-Chem Laboratories Pvt. Ltd., to conduct a test on the production sample pot.

39. On or about October 27, 2020, Geo-Chem issued its report confirming that India Connection's sample passed the inspection and also included pictures showing that the sample pot met the parties' contract requirements.

40. A true and correct copy of Geo-Chem's October 2020 test report is attached as **Exhibit B** and incorporated by reference.

41. Liberty approved the production sample, which had the correct finish.

42. Liberty also approved the product label from India Connection, as shown in the following picture:



43. On December 4, 2020, Costco submitted 23 purchase orders through ABS to Liberty, each for one shipping container holding 704 hose pots.

44. Around the same time, Liberty commissioned a new test from Geo-Chem Laboratories Pvt. Ltd. on one of factory's pots for mass production.

45. Geo-Chem's second report confirmed that the manufactured pot passed the inspection and, again, contained pictures showing that the pot met the parties' contract requirements.

46. A true and correct copy of Geo-Chem's December 5, 2020 test report is attached as **Exhibit C** and incorporated by reference.

47. On December 12, 2020, Liberty began sending its own purchase orders to India Connection to meet Costco's requests for a second production run of the pots (the "**Second Lot**").

48. Liberty ordered 23 containers, for a total of 16,192 pots, from India Connection in December 2020 for the Second Lot.

49. On December 30, 2020, the initial container of hose pots from the First Lot—ordered under Liberty P.O. No. 17926—arrived in the United States from the factory in India.



50. Nearly all of the pots in the first container from India Connection had the correct finish and appearance that the parties had agreed upon.

51. By January 28, 2021, the hose pots from the first container were listed for sale on Costco's website.

52. Before the Second Lot was completed, Costco submitted another 15 purchase orders to Liberty on February 25, 2021, for 10,560 more hose pots.

53. Liberty, in turn, submitted 15 new purchase orders to India Connection for a third production run (the "**Third Lot**").

54. On March 24, 2021, the second container from the First Lot—ordered under Liberty P.O. No. 17928—arrived in the United States from India Connection's factory.

55. As with the first container, nearly all of the pots in the second container from the First Lot had the correct finish and appearance.

56. The problems with India Connection's manufacturing began with the Second Lot.

57. Around the time that the second container from the First Lot arrived in the United States, India Connection sent Liberty pictures of some of the hose pots from the Second Lot while the goods were still at the factory in India.

58. The pots in the pictures from India Connection from the Second Lot were covered in verdigris paint that was neither sanded nor rubbed off.

59. As a consequence, the pot exteriors in the Second Lot were overwhelmingly green, and very little of the copper coating was visible.

60. The pots in the Second Lot did not conform to the agreement between Liberty and India Connection.

61. In April 2021, the first container of pots from the Second Lot arrived in the United States.

62. Liberty inspected the pots and found that none of them met Liberty's specifications for the product.

63. The following picture shows a pot conforming to the parties' agreement from the First Lot on the left, and a pot from the Second Lot on the right:



64. The pot on the right in the picture immediately above is representative of virtually all of the pots manufactured by India Connection in the Second Lot.

65. Liberty immediately notified India Connection that the pots from the Second Lot did not meet the finish and appearance specifications agreed upon by the parties.

66. On April 26, 2021, Liberty's Product Designer, Kenneth Laird, posted a detailed description of the problems with bad pots and supporting photographs to the project management platform, Monday.com, used by Liberty and India Connection.

67. Mr. Laird's April 26, 2021 posts on Monday.com communicated the following to Tammam Rajjoub, one of India Connection's managing "Partners":

- "Major Product Issues – Patina finish looks really bad – it is chalky and the colors do not at all match what the customer is seeing on Costco.com."
- "This is the product we got on the container today. It is quite obvious that the factory is rushing these to get out the door.... They are not whipping the paint so it falls down into the dimples but rather just quickly brushing it and moving it down the line."
- "It looks nothing like what is shown online. Please urgently address with Kent," Liberty's President.
- The packaging for the pots "was a flimsy low tack crack and peel label .... [M]any boxes I checked were brittle and delaminating."

68. Mr. Rajjoub quickly acknowledged the problem, asking: "Kenneth how can I copy the images of these items to send to my [Quality Control]?"

69. Mr. Rajjoub also asked Mr. Laird to add Sanjeev Khokha, India Connection's Principal, and another member of India Connection's team to the Monday.com post to review the issues.

70. The early response came from Tammam Rajjoub, one of India Connection's managing "Partners."

71. In May 2021, Mr. Rajjoub communicated to Liberty that it was "working with Max [Wagerman of Liberty] to resolve this issue and we made some proposals to [Max] yesterday to present to the customer.... As we had discussed with Max yesterday by this coming Monday he will receive images of what is ready to be shipped for approval."

72. Representatives for Liberty and India Connection held a conference via Zoom on May 12, 2021 to discuss the problem.

73. Following the Zoom conference, Mr. Laird posted the following on Monday.com on May 12, 2021:

Notes from Zoom call:

1. Agreement was made with Tammam and factory to see pictures of 1917 pots on water now.
2. Agreement was made to send video showing the process on which the pots are made. For Kenneth's approval.

3. 70 / 30 rule for the pots on the amount of patina - 30% must be rubbed into the dimples and the reference photos and the label will become the standard for all current pots being shipped.

74. On the same date, Mr. Rajjoub responded: "Noted on the above and will send them as soon as possible."

75. Costco also sent pictures of the nonconforming pots to Liberty on May 12, 2021.

76. The following day, May 13, 2021, Costco notified Liberty that it was pulling "all product to be sent back to NC to be corrected."

77. Costco's buyer explained that the pots from the Second Lot were "more green than copper looking."

78. Costco also placed a retainer on Liberty's account in the amount of \$150,000 to cover the estimated cost of returning three containers of nonconforming hose pots to Liberty.

79. During the discussions between Liberty and India Connection to address the problems, on May 24, 2021, India Connection offered the following: "All hose pots in India can be verified for finish in a combination of video inspection, ... or photo inspection, actual production samples sent, etc."

80. In response to India Connection's failure to apply the correct finish to the hose pots in the Second Lot and Third Lot (together, the "**Nonconforming Lots**"), Liberty notified India Connection on May 14, 2021 that none of the open invoices would be paid until the problem was addressed.

81. A true and correct copy of the email from Liberty's President, Kent Southard, to Mr. Rajjoub and Mr. Khokha of India Connection is attached as **Exhibit D** and incorporated by reference.

82. Liberty immediately began inspecting every container arriving from India Connection.

83. None of the pots in the Nonconforming Lots had the correct finish.

84. After evaluating the pots, Liberty notified Costco on May 20, 2021 that "all the pots have looked so bad we have been rejecting the shipments."

85. Liberty and India Connection continued to discuss the finish on the hose pots in the months that followed, but the problem was never resolved.

86. Costco ultimately rejected all of the pots in the Nonconforming Lots.

87. Liberty also rejected all of the pots in the Nonconforming Lots then began negotiating with India Connection in an attempt to resolving the parties' dispute about the Nonconforming Lots and outstanding invoices.

88. Liberty paid India Connection a total of \$517,280.93 in deposits and payments for the Nonconforming Lots, and India Connection issued a credit to Liberty for \$24,437.92.

89. Liberty paid \$237,003.50 in ocean freight costs to ship the Nonconforming Lots to the United States.

90. Despite their negotiations, Liberty and India Connection were unable to reach an agreement to resolve the problems stemming from the Nonconforming Lots.

91. At its own cost, Liberty transported all of the pots in the Nonconforming Lots to storage warehouses and trailers.

92. As of the filing of this Complaint, Liberty has paid \$156,273.15 in inland freight and transportation costs and \$20,782.00 in miscellaneous costs (e.g., demurrage, customs fees, etc.) related to and as a result of the Nonconforming Lots.

93. India Connection failed and refused to retrieve the rejected pots from Liberty's storage facilities.

94. As a result of India Connection's conduct and the Nonconforming Lots, Liberty has paid \$124,874.22 in storage costs for the goods.



95. Liberty's storage costs are ongoing and will continue to accrue during the pendency of this case.

96. Liberty has made reasonable efforts to sell the pots in the Nonconforming Lots for India Connection's account.

97. As of the filing of this Complaint, Liberty has generated \$1,195,284.70 in income from its efforts to resell the goods in the Nonconforming Lots.

98. As of the filing of this Complaint, Liberty has incurred the following costs as part of its effort to resell the goods in the Nonconforming Lots:

- \$58,192.19 in repackaging materials;
- \$49,698.25 in labor for repackaging;
- \$1,200.00 in cardboard disposal;
- \$2,000.00 in labor for shipping; and
- \$750.00 in pallets for shipping.

99. Liberty has paid for, and has a security interest in, all of the pots in its possession.

100. As a direct and proximate result of India Connection's failure to deliver conforming goods, Liberty lost \$675,716.80 in profits from the pots Costco ordered to sell in its retail stores before it rejected the Nonconforming Lots.

101. Liberty also lost \$252,990.00 in profits from the pots Costco ordered to sell online before it rejected the Nonconforming Lots.

102. Due to the problems caused by the Nonconforming Lots, Costco also deducted \$66,137.85 from amounts it owed to Liberty for other products.

103. Liberty lost another \$100,672.00 in profits from pots Menards ordered before it rejected the Nonconforming Lots.

104. Liberty lost at least another \$2,000,000.00 in profits from Costco for future orders Costco would have placed with Liberty if it were not for the Nonconforming Lots.

#### **COUNT I - BREACH OF CONTRACT**

105. Liberty incorporates all foregoing paragraphs of this Complaint as if the same were fully restated and set forth verbatim herein.

106. The agreement between India Connection and Liberty was a contract for the purchase and sale of goods under which India Connection promised to manufacture the hose pots to meet Liberty's specifications, and Liberty agreed to pay India Connection for conforming pots.

107. The hose pots are "goods" under Article 2 of the Uniform Commercial Code.

108. Liberty and India Connection are both “merchants” under Article 2 of the Uniform Commercial Code.

109. The agreement between Liberty and India Connection was an installment contract, the terms of which were evidenced by their respective purchase orders and invoices, as well as their conduct.

110. Liberty performed all of its obligations under the agreement with India Connection.

111. India Connection breached the agreement with Liberty because, with the exception of the two containers of pots in the First Lot, none of the pots from India Connection in the Second Lot or Third Lot conformed to the product specifications agreed upon by the parties.

112. The Nonconforming Lots substantially impaired the value of those installments and the defects with the pots could not be cured.

113. The defects with the pots in the Nonconforming Lots substantially impaired the value of the whole contract.

114. Liberty rejected all of the Nonconforming Lots within a reasonable time after discovering the issues with those goods.

115. As a direct and proximate result of India Connection's breach of the contract with Liberty, Liberty has suffered damages in the total amount of \$3,043,848.27 as of June 7, 2022.

116. Liberty is therefore entitled to judgment against India Connection for at least \$3,043,848.27 due to India Connection's breach.

## **COUNT II - BREACH OF EXPRESS WARRANTY**

117. Liberty incorporates all foregoing paragraphs of this Complaint as if the same were fully restated and set forth verbatim herein.

118. India Connection promised to manufacture the hose pots with the copper patina finished agreed upon in the discussions between Liberty and India Connection in 2020.

119. The standard for the manufactured pots was that verdigris paint for the patina finish would cover no more than 30% of each pot

120. The finish was a material part of the basis of the bargain between Liberty and India Connection.

121. The copper patina finish was clearly and particularly described in the communications between the parties, shown in the pictures exchanged by the

parties between June 2020 and August 2020, and applied to the hose pot samples reviewed and approved in August and October 2020.

122. The preproduction and postproduction samples from India Connection with the correct finish were part of the basis of the bargain between Liberty and India Connection.

123. India Connection expressly warranted that the hose pots would all have the approved copper patina finish.

124. None of the hose pots in the Nonconforming Lots had the approved copper patina finish; instead, all of the rejected pots were covered in verdigris paint.

125. India Connection breached its express warranty by sending the Nonconforming Lots to Liberty.

126. As a direct and proximate result of India Connection's breach of the express warranty, Liberty has suffered damages in the amount of \$3,043,848.27 as of June 7, 2022.

127. Liberty is therefore entitled to judgment against India Connection for at least \$3,043,848.27 due to India Connection's breach.

### **COUNT III - BREACH OF IMPLIED WARRANTY**

128. Liberty incorporates all foregoing paragraphs of this Complaint as if the same were fully restated and set forth verbatim herein.

129. The hose pots in the Nonconforming Lots did not run, within the variations permitted by the parties' agreement, of even kind or quality with the approved samples or the pots India Connection shipped to Liberty in the First Lot.

130. The goods in the Second Lot and Third Lot did not pass without objection under the contract description between Liberty and India Connection.

131. Many of the pots in the Second Lot and Third Lot were not adequately contained, packaged, or labeled as required under the parties' agreement.

132. India Connection breached the implied warranty of merchantability for the hose pots as to the Second Lot and Third Lot.

133. As a direct and proximate result of India Connection's breach of the implied warranty of merchantability, Liberty has suffered damages in the amount of \$3,043,848.27 as of June 7, 2022.

134. Liberty is therefore entitled to judgment against India Connection for at least \$3,043,848.27 due to India Connection's breach.

#### **COUNT IV - ATTORNEY'S FEES**

135. Liberty incorporates all foregoing paragraphs of this Complaint as if the same were fully restated and set forth verbatim herein.

136. India Connection has been stubbornly litigious and acted in bad faith, and thereby caused Liberty unnecessary trouble and expense in having to bring this action.

137. Liberty is therefore entitled to an award of attorney's fees to be determined by the finder of fact.

**WHEREFORE**, Liberty prays for the following:

- (a) That this Court exercise its subject matter jurisdiction in this matter;
- (b) That this Court exercise its jurisdiction over the parties herein;
- (c) That Summons issue to India Connection;
- (d) That the Court enter judgment against India Connection for the amounts and on the bases set forth herein;
- (e) That the Court award attorney's fees and costs associated with this matter; and
- (f) For such other and further relief as the Court may deem just and proper.

**JONES & WALDEN LLC**

/s/ Tyler W. Henderson

Tyler W. Henderson

Georgia Bar No. 854853

Counsel for Plaintiff

699 Piedmont Avenue, NE

Atlanta, Georgia 30308

(404) 564-9300

THenderson@joneswalden.com

### **CERTIFICATE OF COUNSEL**

The undersigned counsel certifies that this document complies with the format requirements of LR 5.1, NDGa.

Respectfully submitted this 9th day of June, 2022.

**JONES & WALDEN LLC**

/s/ Tyler W. Henderson

Tyler W. Henderson

Georgia Bar No. 854853

Attorney for Plaintiff

699 Piedmont Ave., NE

Atlanta, Georgia 30308

(404) 564-9300

THenderson@joneswalden.com